

Remarks

Claims 72-75 have been amended herein. Claims 76-78 have been added. Claims 59-71 have been withdrawn. Claims 72-78 are now pending in the Application. No new matter has been added. Entry of the amendment is respectfully requested. Reconsideration is respectfully requested.

Claims 72-75 have been amended to more clearly recite the features, relationships and steps recited in the claims. The "throat area" feature originally recited in claim 72 has been moved to dependent claim 73.

New method claim 76 recites further features and/or steps associated with clamping step (e). Support for claim 76 is found in the Specification (e.g. withdrawn claim 59).

Support for new method claims 77 and 78 is found in the Specification. Claims 77 and 78 recite features recited in granted claims 43, 44, and 45 of the parent application of which the present case is a divisional (see U.S. Patent No. 6,745,062).

Applicants Provisionally Elect With Traverse

In response to the Office Action dated October 28, 2004 requiring restriction election, Applicants provisionally elect with traverse Group II (claims 72-75). Reconsideration and withdrawal of said restriction requirement is respectfully requested. As shown in more detail herein, the restriction requirement is without legal basis.

Reasons For Insisting On Restriction Have Not Been Established

The Action alleges two distinct Groups (I and II). However, the Office has not shown an appropriate explanation for insisting upon restriction. The Office has not met the criteria of serious burden. If the search and examination of an entire application can be made without serious burden (which is the current situation), then the Office must examine it on the merits. Thus, the Applicants respectfully submit that the restriction requirement should be withdrawn and that all of the claims should be examined on the merits.

The Restriction Requirement Is Without Legal Basis

Applicants additionally respectfully wish to point out that the Action fails to state a legally proper test for imposing a restriction requirement. The Action indicates that the restriction requirement is solely based on a showing of the alleged inventions being "distinct." Applicants also respectfully wish to point out that the Action fails to state a legally sufficient basis for imposing a restriction requirement. The statutory authority for the Patent Office to impose a restriction requirement is found in 35 U.S.C. § 121. The statute expressly states that before the Patent Office may require restriction, the inventions must be both "independent" and "distinct." The regulations that have been promulgated pursuant to this statute, 37 C.F.R. § 1.141 and 37 C.F.R. § 1.142, both expressly state that before a restriction requirement may be imposed the inventions claimed must be both independent and distinct.

In the Action, there are only unsupported assertions that the sets of claims are "distinct." There are no assertions that the sets of claims are "independent", as is required. This standard does not comply with the statutory requirements. Therefore the reasons asserted in the Action for

seeking to impose the restriction requirements are legally insufficient due to noncompliance with the clear wording of both the statute and the regulations promulgated thereunder.

Furthermore, the Patent Office has acknowledged that before claimed inventions can be considered to be "independent" the inventions must be unconnected in design, operation, or effect. MPEP § 802.01. All the claims directed to Applicants' invention are related in design, operation, and effect. Thus, the statutory requirements are not met and no restriction requirement may be imposed.

Additional Claim Fees

No fee is due with the submission of this Response. However, for any other fees due associated with the prosecution of this Application, please charge Deposit Account No. 10-0637 of Walker & Jocke.

Conclusion

Reconsideration and withdrawal of the restriction requirement and election is respectfully requested. The undersigned will be happy to discuss any aspect of the Application by telephone at the Examiner's convenience.

Respectfully submitted,


Christopher L. Parmelee Reg. No. 42,980
Walker & Jocke
231 South Broadway
Medina, Ohio 44256
(330) 722-5143